



## UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/412,122	10/05/1999	ALBERTO GUTIERREZ, JR.	RR2619	9247
49403	7590	03/01/2011		
GARLICK HARRISON & MARKISON P.O. BOX 160727 AUSTIN, TX 78716-0727				
EXAMINER				
BATISTA, MARCOS				
ART UNIT		PAPER NUMBER		
2617				
NOTIFICATION DATE		DELIVERY MODE		
03/01/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

SMCWHINNIE@TEXASPATENTS.COM

MMURDOCK@TEXASPATENTS.COM

GHMdocketing@cpaglobal.com

**Advisory Action  
Before the Filing of an Appeal Brief**

**Application No.**

09/412, 122

**Applicant(s)**

GUTIERREZ, JR. ET AL.

**Examiner**

MARCOS BATISTA

**Art Unit**

2617

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 14 February 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Rafael Pérez-Gutiérrez/  
Supervisory Patent Examiner, Art Unit 2617

Continuation of 11. does NOT place the application in condition for allowance because:

After carefully revising the Office Action pertinent to the present response and remarks, the following main point(s) have been identified:

1) The Applicant's remarks at page 14 lines 3-15 states:

"The portion of Tsunehara cited by the Final Office Action recites that the "base station inserts common transmission power control signals 142a, 142b, 142c, . . . into a common answer channel shared by mobile terminals in the area and transmits them." (Tsunehara 7:29-33). This portion does not refer to "bits" as set out in Applicant's claims; Tsunehara refers to bits as the "data packet is made of several tens of bits to allow information of some amount to be transmitted at the same time. In contrast, the common transmission power control signal 111 can be made of n bits assuming the same system as IS-95." (Tsunehara 5:52-56).

Applicant's claims, in contrast, sets out that the base station supporting power control channel comprises a plurality of power control bits, each power control bit corresponding to a reverse link common channel of the plurality of reverse link common channel and directing a respective subscriber unit to adjust its reverse link transmission power, and a plurality of inhibit bits. (see, e.g., Claim 1)."

Regarding point 1), Tsunehara discloses a base station scheduling uplink transmission channels and time slots for a plurality of mobile stations. Tsunehara also discloses the base station transmitting power control signals (i.e., power control bits) to all the mobile stations in order to command the mobile stations to change the uplink transmission power. Furthermore, Tsunehara at column 3 lines 55 through 61 clearly discloses shared channels used by mobile terminals one of which is an uplink (i.e., reverse) channel. The mobile terminals use this common channel to exchange channel reservation with the base station. The power control bit is clearly disclosed at Col. 5 lines 49-56 and Col. 7 lines 29-41.

Tsunehara, Col. 3 lines 55-61:

In the CDMA packet communication system using reservation based access control, channels shared by a plurality of mobile terminals in the service area include a reservation channel 1 (uplink channel), an answer channel 2 (downlink channel) and a pilot channel 8 (downlink channel). The pilot channel 8 is a channel used for transmitting a pilot signal 9 as a reference signal to each mobile terminal.

Tsunehara, Col. 3 line 62 - col. 4 line 2:

(5) A mobile terminal having a data transmission request transmits a reservation packet 4 at a desired timing by using the reservation channel 1. The base station performs scheduling of received reservation packets. The base station selects (schedules) a channel and a time slot (a time slot 7 is defined in an uplink traffic channel 3) via which each mobile terminal can transmit data, from a plurality of uplink traffic channels 3.

Tsunehara, Col. 5 lines 49-56:

In order to suppress a fluctuation of the received level of a data packet, the base station is required to perform a transmission power control of each mobile terminal at a sufficiently high occurrence frequency. The data packet is made of several tens of bits to allow information of some amount to be transmitted at the same time. In contrast, the common transmission power control signal 111 can be made of n bits assuming the same system as IS-95.

Tsunehara, Col. 7 lines 29-41:

(30) The base station inserts common transmission power control signals 142a, 142b, 142c, . . . into a common answer channel shared by mobile terminals in the area and transmits them. The common transmission power control signal 142 contains transmission power control signals for the respective traffic channels 1 to n. Each of the mobile terminals 1 to n transmitting data packets 1 to n to the base station derives the transmission power control signal of the traffic channel now in use by the mobile terminal, from the common transmission power control signals 142a, 142b, 142c, . . . In accordance with the derived transmission power control signal, the mobile terminal changes the transmission power of the data packet.

2) The Applicant's remarks at page 16 lines 6-10 states:

"Diachina does not teach or disclose a power control channel, nor does it teach or disclose power control generally, in contrast to Applicant's claims. Further, the BRI flags do not provide 'inhibit bits,' but instead refer to downlink operations by the "base station, mobile telephone service center and internetworking function (BMI)." (see Diachina 14:15-20)."

Regarding point 2), Diachina was cited for teaching the limitation recited in claimed invention of "a plurality of inhibit bits, each of the plurality of inhibit bits corresponding to a reverse link common channel of the plurality of reverse link common channels and indicating whether a dedicated burst mode has been scheduled for the reverse link common channel," which is the base for the Applicant's argument above. Diachina in the cited portion teaches BRI flags are used to indicate to the mobile station whether a particular slot was already reserved. The mobile stations can then use the assigned slot for uplink using the shared channel. The BRI flags inherently indicate to the mobile station, which time slots are prohibited for being used since those time slots are assigned to other mobile stations.

Diachina, Col. 6 lines 34-39:

(11) The random access channel RACH is used to request access to the system. The attributes of this channel are unidirectional (uplink), shared, point-to-point, and acknowledged. Contention resolution and/or collision avoidance information is provided on the forward subchannel corresponding to any given frame sent on the RACH.

Diachina, Col. 9 lines 41-47:

(20) The layer 2 protocol also contains a plurality of flags. Forward shared control feedback (SCF) flags are used to control transmissions on the RACH. A busy/reserved/idle (BRI) flag is used to indicate whether its corresponding uplink RACH slot is Busy, Reserved or Idle. Six bits are used for these flags and the different conditions are encoded as shown in the table below:

Diachina, Col. 11 lines 44-52:

(27) When a mobile station is in the "start reserved access" state, it looks at BRI and PE information in all downlink slots of the current DCC, regardless of subchannels, for a slot where BRI=Reserved and a PE match occurs, which will be explained below. The base station (BS) can assign a reserved slot for a given mobile station MS regardless of which subchannel the MS may have previously used. If a mobile station finds this slot, it sends the first unit of its message in the corresponding uplink RACH subchannel.

3) The Applicant's remarks at page 16 lines 6-10 states:

"Applicant respectfully submits that a prima facie showing of obviousness has not been made because the hypothetical combination of the combined answer/power control signals of Tsunehara with the collision avoidance of Diachina do not provide a suggestion or motivation for the proposed combination, nor provide any suggestion or motivation to achieve Applicant's invention as set out by the claims. Further, the hypothetical combination of the combined answer/power control signals of Tsunehara with the collision avoidance of Diachina does not teach or disclose all of Applicant's claim limitations."

Regarding point 3), Tsunehara discloses a base station for managing power control over a shared channel and scheduling transmission slots to a plurality of mobile stations. Diachina discloses using a busy/reserved/idle (BRI) flag to indicate whether its corresponding uplink RACH slot is Busy, Reserved or Idle to a mobile station.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the invention of Tsunehara and have it include the teachings of Diachina. The motivation would have been in order to signal uplink transmission access to a plurality of mobile stations on a shared channel.

Therefore, the argued features are written such that they read upon the cited reference(s).